IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 286 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI MOHANBHAI PATEL & 2 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR KB ANANDJIWALA for Applicant(s) : 1 - 3.
Ms. Mita Panchal for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 28/03/2007

ORAL JUDGMENT

1. Invoking provisions of section 397 of the Code of Criminal Procedure, 1973 (for short, "the Code), the petitioners, accused persons, have approached this court with the prayer to quash the

order dated 9.4.1999 of the learned Addl.Sessions Judge, Vadodara below application Exh.5 in Atrocity Sessions Case No.98/98. The petitioners appear to have filed that application Exh.5 for discharging them as far as offences punishable under section 3 (1) (x) of The Scheduled Castes & The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (or short, "the Act"), were concerned, on the basis, that the alleged offences were not committed within public view. That application was submitted at the stage of framing of the charge.

2. After perusing the papers of investigation, the Sessions Court found that office of the Principal where the offences were alleged to have been committed was a public place and, therefore, the application of the petitioners was dismissed.

3. Learned counsel Mr K.B. Anandjiwala, appearing for the petitioners vehemently argued that chamber of the Principal of a college or a school could not be freely accessible to the common public and ought not to have been treated to be a place

within public view. He however, fairly conceded that, whether a particular place was within public view or not was a question of fact and that question could be decided only on the basis of material or evidence on record.

4. In the facts of the present case, even as the impugned order was made after perusal of the police papers, neither any additional material nor even the papers of investigation are before this court. Therefore, in short, there is no material to take a different view or to hold that the *prima facie* findings recorded by the learned Additional Sessions Judge in the impugned order was in any way perverse or illegal. Therefore, the petition is dismissed as having no merits and no substance. Rule is discharged and interim relief is vacated with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp